

REMARKS

Reconsideration of the above-identified patent application is respectfully requested.

Claim 40 has been amended herein to replace “another” in line 3 thereof with – additional-- to thereby properly refer to the “additional conveyance roll” recited in line 2. No new matter has been added by this amendment.

Claims 18 – 47 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Pub. No. US 2002/0057993 to Maisey et al. (hereinafter “Maisey”).

At the outset, applicant notes that the Examiner’s rejection is curiously devoid of any written comparison of the actual language of applicant’s claims to features illustrated and described in Maisey. Rather, the Examiner’s written analysis describes and identifies only features shown and disclosed in the Maisey reference. Accordingly, applicant’s undersigned attorney initiated a telephone call to the Examiner on June 15, 2009 to discuss this discrepancy. In a follow up telephone conversation on June 19, 2009, Examiner Siefke indicated that despite the lack of written comparison of applicant’s claim language to features shown and/or disclosed by Maisey the Examiner considers Maisey to anticipate each of applicant’s claims 18-47 under 35 U.S.C. § 102(b). For at least the following reasons, applicant respectfully traverses this rejection.

In order to establish a *prima facie* case of anticipation of a claimed invention, each and every element as set forth in the claim must be disclosed, either expressly or inherently, in a single prior art reference, and the identical invention must be shown in as complete detail as is contained in the claim (MPEP § 2131). In this case, contrary to

the Examiner's assertion, Maisey does not disclose all of the elements of applicant's claims. For example, Maisey does not show or disclose "a drivable conveyance roll . . . configured to . . . grip the analytic consumable . . . and to move [or advance] the analytic consumable along the conveyance path" as required by each of applicant's independent claims 18, 43 and 46.

Maisey discloses a drum 4 having a recess 12 formed therein that carries individual test strips 16 from the test strip magazine 18 to a test position and then to an ejection position. During this process, a pushing member 28 contacts the test strip 16 located in the recess 12 and pushes the test strip 16 outwardly to the test position. However, this contacting and pushing the test strip, as disclosed by Maisey, is distinctly different than gripping an analytic consumable as required by each of applicants' claims 18-47. Moreover, applicants assert that nowhere does Maisey show or disclose a conveyance roll structure that grips an analytic consumable protruding or projecting into a conveyance path and moves or advances the gripped analytic consumable along the conveyance path.

Applicants have herein amended each of the independent claims 18, 43 and 46 to insert "gripped" prior to the second recitation of "analytic consumable" in the above claim limitation to emphasize that the drivable conveyance roll "grips" the analytic consumable and then moves or advances the "gripped" analytic consumable along the conveyance path. Applicants have further amended claims 30 and 44 consistently with therewith. Maisey does not show or disclose any such structure, and therefore cannot anticipate any of applicants' claims 18-47. Accordingly, applicants respectfully request

withdrawal of the 35 U.S.C. § 102(b) rejection of applicants' claims 18-47 as being anticipated by Maisey.

New claims 48-82 have been added to further and more distinctly claim the subject matter of applicants' invention. New independent claim 48 is directed to a handheld analysis device having an analysis sensor to which an analytic consumable may be supplied along a conveyance path, a display unit, a housing and a drivable conveyance roll that is configured to grip an analytic consumable protruding into the conveyance path and to move the gripped analytic consumable along the conveyance path, in which the drivable conveyance roll is drivable both a clockwise and a counterclockwise direction to move the gripped analytic consumable in a removal direction and in an opposite direction respectively. New claims 49-63 each ultimately depend from new claim 48 and add further limitations thereto. The subject matter of the new claims 48-63 is based on the claims in the counterpart European patent application EP 1 745 284 B1, now granted, and is fully supported in applicants' specification.

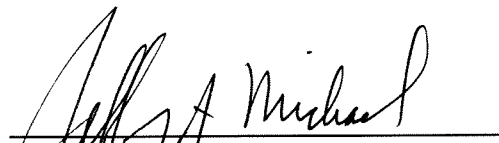
New independent claim 64 is directed to a handheld analysis device having an analysis sensor to which an analytic consumable may be supplied along a conveyance path, a display unit, a housing, a drivable conveyance roll that is configured to grip an analytic consumable protruding into the conveyance path and to move the gripped analytic consumable along the conveyance path, and a pushrod configured to push the analytic consumable out of a chamber such that it can then be gripped by the conveyance roll and moved along the conveyance path. New claims 65-82 each ultimately depend from new claim 64 and add further limitations thereto. The subject matter of the new claims 64-82 is based on the claims in a pending counterpart

European patent application EP 08 005 435.6 (divisional application of EP 1 745 435.6), and is fully supported in applicants' specification. Support for the pushrod limitation of new claim 65, for example, can be found at page 3, lines 28-31, page 5, lines 26-27, page 6, lines 12-14 and page 6, lines 16-19.

This paper should further be considered as a petition for a two-month extension of time for responding to the Office Action dated April 13, 2009. The commissioner is hereby authorized to charge the \$490.00 fee for this two-month extension of time to Deposit Account 10-0435, with reference to charge no. 5727-200678. Applicants have further presented herein 35 new claims for substantive examination, including 2 new independent claims and 33 new dependent claims. The commissioner is further authorized to charge the additional claim fees associated therewith to Deposit Account 10-0435, with reference to charge no. 5727-200678, as set forth in the accompanying papers.

Claims 18, 30, 43-44 and 46 have been amended, new claims 48-82 have been presented, and all claim rejections have been traversed. Claims 18-82 are believed to be in condition for allowance, and such action is solicited. The Examiner is cordially invited to contact the undersigned by telephone to discuss any unresolved matters.

Respectfully submitted,



Jeffrey A. Michael
Registration No. 37,394
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204-3335
Telephone: (317) 231-7382
Fax: (317) 231-7433